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# in the Supreme Court of the United States

**OCTOBER TERM, 1969**

**No. 340**

BERNIE LUDWIG,

*Petitioner,*

*vs.*

STATE OF FLORIDA,

*Respondent.*

**Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District**

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19 West Flagler Street
Miami, Florida 33130

MIAMI REVIEW — 371-4853 — 377-3721

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# Supreme Court
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**OCTOBER TERM, 1969**

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**No._____**

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BERNIE LUDWIG,

*Petitioner,*

*vs.*

STATE OF FLORIDA,

*Respondent.*

---

**Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District**

---

Petitioner prays that a writ of certiorari issue to review the decision and judgment of the District Court of Appeal of Florida, Third District.

## OPINION BELOW

The Opinion of the District Court of Appeal of Florida, Third District, affirming Petitioner's conviction, is reported in 215 So. 2nd 898 (1968), and may be found in Appendix L.

## GROUNDS FOR JURISDICTION

The Sentence and Judgment of conviction of the Criminal Court of Record in and for Dade County, Florida, was entered on January 5, 1968 (Appendix G). The Opinion of the District Court of Appeal of Florida, Third District, affirming Petitioner's conviction, was entered on November 26, 1968 (Appendix L). Said Court's Order Denying Petition for Rehearing was entered on December 19, 1968 (Appendix M). The Supreme Court of Florida denied a Petition for Writ of Certiorari on April 29, 1969 (Appendix N), and denied the Petition for Rehearing on June 12, 1969 (Appendix O).

The Jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3), because a title, right, privilege or immunity claimed under the Constitution of the United States was denied by the District Court of Appeal of Florida, Third District.

## QUESTIONS PRESENTED

I. A SEARCH WARRANT ISSUED PURSUANT TO AN AFFIDAVIT BASED UPON INFORMATION RECEIVED FROM AN INFORMANT, THAT FAILS TO ALLEGE THE RELIABILITY OF THE INFORMANT, IS IN VIOLATION OF THE PETITIONER'S RIGHTS UNDER THE FOURTH, FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

II. WHEN A SEARCH WARRANT SPECIFICALLY DETAILS WHICH PROPERTY IS TO BE SEIZED UNDER SAID WARRANT, EVEN IF SAID WARRANT IS VALID AND EVEN IF IT IS PROPERLY EXECUTED, PROPERTY NOT NAMED IN THE WARRANT CANNOT BE SEIZED UNDER THE AUTHORITY OF SAID WARRANT, WITHOUT VIOLATING THE PETITIONER'S RIGHTS UNDER THE FOURTH, FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### CONSTITUTION OF THE UNITED STATES

### AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual

service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensations.

## AMENDMENT XIV

### SECTION I

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## CONSTITUTION OF THE STATE OF FLORIDA

### SECTION 12—DOUBLE JEOPARDY:

SELF-INCRIMINATION:
EMINENT DOMAIN:
RIGHT TO WORK

No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall

private property be taken without just compensation. The right of persons to work shall not be denied or abridged on account of membership or non-membership of any labor union, or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer.

## SECTION 22—SEARCHES AND SEIZURES

The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches, shall not be violated and no warrants issued, but upon probable cause, supported by oath or affirmation, particularly describing the place or places to be searched and the person or persons, and thing or things to be seized.

# TITLE 28
# UNITED STATES CODE

## SECTION 1257 (3)

Final judgments or decrees rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: By Writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

## STATEMENT OF THE CASE

The Petitioner was living in Apt. 113, 333 University Drive, Coral Gables, Dade County, Florida, on March 13, 1966.

On the aforementioned date Sgt. Joseph Fernandez, a Deputy Sheriff with the Dade County Sheriff's Office, signed an Affidavit for a Search Warrant before the Hon. James Lawrence King, one of the Circuit Judges of the Eleventh Judicial Circuit of Florida, (R. 7A) (Appendix E) to the effect that he had received information from one, Antonio P. Guerra, through an Inspector Bland, of the Tampa, Florida Police Department, that certain stolen jewelry from Sarasota, Florida, had been sold to a Bernard Ludwig on the premises known as Apt. 113, 333 University Drive, Coral Gables, Dade County, Florida. The Affidavit further stated that Fernandez had been contacted by Inspector Bland who told him that Guerra had admitted stealing this jewelry and that he, Guerra, was present at the time the jewelry was sold to Ludwig. Sgt. Fernandez then stated in the Affidavit that he had reason to believe that the stolen jewelry was in the apartment of Bernard Ludwig located at the aforementioned address (R. 106-108). In the Affidavit no mention is made as to the reliability of either Guerra or Inspector Bland, and fails to affirmatively show that the jewelry in question was still on the Defendant's premises. The jewelry was described in detail in the Affidavit. Sgt. Fernandez testified he did not know Guerra and did not know if Inspector Bland knew him (R. 18A).

Pursuant to this Affidavit, a Search Warrant was issued by Judge King for the premises known as Apt. 113,

333 University Drive, Coral Gables, Dade County, Florida, (Appendix F) authorizing the search of said premises for the specific purpose of searching for the jewelry outlined by Sgt. Fernandez in the Affidavit and to seize said jewelry. The jewelry was described in the Warrant in detail (R. 108-110). The Warrant mentioned no other property to be seized other than jewelry.

Armed with said Search Warrant, Sgt. Fernandez and a number of deputies from his department and a number of Federal Agents proceeded to the Petitioner's apartment, 333 University Drive, Coral Gables, Dade County, Florida, arriving there shortly before midnight on March 13, 1966. They knocked on the door of Apt. 113 and announced that they were police officers. The Petitioner answered them by asking them to wait just a minute. The officers waited about a minute or two, knocked again and, upon hearing no answer, proceeded to break down the door (R. 11A-12A). Upon entering the premises they saw the Petitioner standing in his undershorts (R. 12A) and proceeded to give him a signed copy of the Search Warrant (R. 23A).

The officers then proceeded to search the apartment looking for the stolen jewelry set forth in the Search Warrant; but were unable to find the same (R. 12A). The officers then proceeded to seize certain fur stoles and assorted silverware including silver serving pieces, that were not named in the Search Warrant (R. 13A-14A, 111-123).

Sgt. Fernandez, during his testimony at the Motion to Suppress heard before and during the trial, admitted that none of the items seized from the Petitioner's prem-

ises were, in fact, mentioned in the Warrant or Affidavit (R. 12A-14A). He further testified that none of the jewelry outlined in the Affidavit and Warrant was found at the time of the search (R. 17A).

When asked by the Petitioner's counsel during the aforementioned testimony why he seized said property not named in the Warrant, Sgt. Fernandez said that he had reasonable grounds to believe that the furs and silver were stolen (R. 13A-14A). When asked what made him believe this, he stated that sometime before this date he had received a call from a police officer in New Orleans informing him that a fur had been stolen from a home in New Orleans from a particular person (R. 13A-14A). Sgt. Fernandez stated that one of the furs had a New Orleans label in it. However, it will be noted that the initials inside the fur do not match the initials of the person from whom it was allegedly stolen (R. 13A-14A). He further stated that, because some of the silver items and fur pieces had initials on them different from the Petitioner's, he had reason to believe that these other items were stolen as well (R. 23A-24A). Later on in his testimony Sgt. Fernandez admitted that he didn't know the seized property was stolen, and that his reasonable ground to believe that these items were stolen was merely suspicion and he took the items hoping that they might be identified as being stolen (R. 50A). The Petitioner was not arrested at that time (R. 18A-19A, 50A).

Sgt. Fernandez testified that he did not arrest the Petitioner because he did not know that the property he found at the apartment was stolen (R. 50A). Sgt. Fernandez further testified that the Petitioner was not charged with any offense until some of the items found in his apartment were identified by the true owners as having been stolen (R. 21).

The property so identified was introduced at the trial over Petitioner's objections (R. 87).

The Petitioner was originally charged in several separate Informations with violating Florida Statute 811.16, buying, receiving and concealing stolen property. The State of Florida then consolidated these cases and filed a new Information (Appendix A) charging the Defendant with six counts of buying, receiving or aiding in the concealment of stolen property (R. 94-98). The Information alleged that the Defendant, on March 13, 1966, did unlawfully, knowingly and feloniously buy, receive or aid in the concealment of certain stolen property. Each count alleged a specific piece of property owned by a separate individual.

Amongst the pre-trial motions filed by the Defendant was a Motion to Quash the Affidavit for a Search Warrant and the Search Warrant obtained by the police to search the Defendant's premises and contained within said motion was a Motion to Suppress All Evidence Seized Under said Warrant (R. 100-102) (Appendix C). After taking testimony in regards to these motions, the Court denied said motions (Appendix D & E). These same motions were renewed at the time of trial (R. 104-105) and, after again hearing testimony in regards to said motions, the Court again denied them (R. 104-105, 124) (Appendix D & E).

At the time of trial the Defendant objected to the admissibility into evidence of all property seized under the Warrant, but said objection was overruled (R. 87).

The Defendant waived trial by jury and was found guilty by the Court as to Counts 1, 2, 3, 5 and 6 (R. 89, 125) (Appendix G). The State dismissed, of its own motion, Count 4 (R. 89, 124). The Court adjudged the Defendant to be guilty as charged and sentenced him to Three (3) years in prison (R. 128-129) (Appendix G).

The Defendant's Motions for Directed Verdicts of Acquittal, both at the close of the State's case and the conclusion of the entire case, were denied (R. 88-89, 124). Defendant filed a Motion for a New Trial (Appendix H) which was also denied (R. 125-127) (Appendix I). Notice of Appeal (Appendix J) and Assignments of Error (Appendix (K) were thereafter filed by the Defendant (R. 129-133).

The history of this appeal and its results have been heretofore reviewed in this petition under section entitled Ground for Jurisdiction.

## HOW THE FEDERAL QUESTIONS WERE RAISED

Prior to Trial, the federal questions were raised in the Petitioner's Motion to Quash the Affidavit and Search Warrant and to Suppress such Evidence which was obtained contrary to the Constitutions of the State of Florida and the United States (Appendix B). The Trial Court denied the aforesaid Motions (Appendix C & D).

The federal questions were raised during the Trial when the evidence seized from the Petitioner's home was introduced over Petitioner's objections and renewal of his Motion to Suppress.

The federal questions were raised after the Trial by the Petitioner's Motion for New Trial (Appendix H) which was denied by the Trial Court on January 5, 1968.

The federal questions were raised in Petitioner's Assignments of Error filed in the District Court of Appeal of Florida, Third District, (Appendix K), and in the Brief of Petitioner, and in the Petition for Rehearing in said Court which was denied on December 19, 1968 (Appendix M).

The federal questions were likewise raised in the Petition for a Writ of Certiorari filed in the Supreme Court of Florida as well as the Petition for Rehearing in said Court which was denied on June 12, 1969, (Appendix O).

## REASONS FOR GRANTING THE WRIT

### QUESTION PRESENTED

I

A SEARCH WARRANT ISSUED PURSUANT TO AN AFFIDAVIT BASED UPON INFORMATION RECEIVED FROM AN INFORMANT, THAT FAILS TO ALLEGE THE RELIABILITY OF THE INFORMANT, IS IN VIOLATION OF THE PETITIONER'S RIGHTS UNDER THE FOURTH, FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The law is clear that where an Affidavit for a Search Warrant is based upon information obtained from an Informant there must be a statement therein contained as to the Informant's reliability or credibility.

To begin with Appellant cites an appropriate statute and constitutional guaranties.

The Declaration of Rights, Section 22 of the Florida Constitution reads as follows:

> "The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated and no warrants issued, but upon probable cause, supported issued, by oath or affirmation, particularly describing the place or places to be searched and the person or persons, and thing or things to be seized."

The Fourth Amendment of the United States Constitution is almost identical with this particular section of the Florida Constitution.

In **Mapp vs. Ohio**, 367 U.S. 643, 81 S.Ct. 1684, (1961), the Supreme Court of the United States held that evidence obtained by state officers in violation of the Fourth Amendment to the United States Constitution is inadmissible in a State criminal trial. The Court said:

> "We hold that all evidence obtained in searches and seizures in violation of the Constitution is, by the same authority, inadmissible in a state court."

Again in the case of **Ker vs. California**, 374 U.S. 23, 83 S.Ct. 1623, (1963), the United States Supreme Court ruled that federal standards govern in determining whether state officers have violated the Fourth Amendment and is made enforceable against the states by the Fourteenth Amendment. The Court said:

> "We specifically held in **Mapp** that this constitutional prohibition is enforcable against the States through the Fourteenth Amendment 'is enforceable against them (the States) by the same sanction of exclusion as is used against the Federal Government,' by application of the same constitutional standard prohibiting 'unreasonable searches and seizures.'"

Let us therefore examine the standards set up by the United States Supreme Court and other Federal courts in regard to the question raised in Point One of this **Brief.**

In the case of **United States vs. Freeman**, (CA 2, 1966) 358 F.2d 459, a Search Warrant had been issued based upon information received from an Informant, however the Affidavit for the Search Warrant did not state whether or not the Informant, upon whose information the Warrant was based, was, in fact, reliable or credible. The Court quoted from the famous **Aguilar vs. Texas** case, 84 S.Ct. 1509, (1964):

> "Although an Affidavit may be based on hearsay information and need not reflect the direct personal observations of the Affiant (cited authorities) the magistrate must be informed of some of the underlying circumstances from

which the Informant concluded that the narcotics were where he claimed they were and some of the underlying circumstances from which the officer concluded that the Informant whose identity need not be disclosed (cited authorities) was credible or his information reliable."

In **United States vs. Ventresca,** (CA 1, 1963) 324 F.2d 864, the Court held:

"Hearsay information received from an Informant may be used in an Affidavit to secure a search or arrest warrant **only when the Informant is shown to be trustworthy or reliable."**

The United States Supreme Court later reversed this case on other grounds but the aforementioned principle of law was left undisturbed.

In **Castillon vs. United States,** (CA 9, 1962) 298 F.2d 256, the Court held that in the case of an arrest without a Warrant that "probable cause" and "reasonable grounds" can come from an Informer, but that there must be testimony to show that the Informer, in fact, was reliable.

**United States vs. Pearce,** (CA 7, 1960), 275 F.2d 318, is a case on point with this one. In the Pearce case an Affidavit was signed by a law-enforcement officer claiming that the information was received from another law-enforcement officer who in turn had received it from an Informant who had proved to be reliable in the past. A Search Warrant was issued based upon this representa-

tion to the Court, and the Defendants were found in possession of stolen furs and were convicted of transporting and receiving stolen furs. The Defendants filed a Motion to Suppress stating that, in truth and in fact, the Informant was not known and his reliability was not known to the law enforcement officers, and that the statement contained within the Affidavit for a Search Warrant as to the reliability of the Informant was false. The United States Court of Appeals for the Seventh Circuit reversed the conviction because the Court found that, in truth and in fact, the Informant was not known and his reliability was not known to law enforcement officers prior to their receiving the information which was placed in the Affidavit for the Search Warrant. The Court held that, before a Search Warrant can be issued, the Informant must be "proved reliable" and such a showing must affirmatively appear in the Affidavit for the Search Warrant.

In the instant case that this Court has under consideration not only did the State fail to show that, in fact, the Informant, Guerra, was reliable, but they failed completely to mention or state that he was a reliable Informant and had been proved to be reliable in the past.

The famous case of **Wong Sun vs. United States**, 371 U.S. 471, 83 S.Ct. 407, (1963), discussed the exact same issue raised in this case. In **Wong Sun** an arrest was made of an individual and he was charged with possession of narcotics. The person arrested then told the law-enforcement officers that he had purchased this particular narcotic from the Defendant at his place of business. The officers then believed that they had probable cause to believe that the Defendant, in fact, was selling nar-

cotics from his establishment. They then proceeded to make their case against the Defendant and proceeded to arrest him based upon the information provided to them by their Informant. However, the U. S. Supreme Court said that the officers did not have probable cause to make an arrest and even if they attempted to get a Warrant for the arrest of the Defendant or a Warrant to search his business, under the fact situation as it is related here, they would be unable to get it because the reliability of the Informant must be shown before probable cause can exist for the issuance of any Arrest Warrant or any Search Warrant. The Court said even though the Informant admitted buying the narcotics from the Defendant, there was nothing to show that the officers could accept this information as being reliable.

It is submitted to the Court that the fact situation in the **Wong Sun** case in regards to the alleged probable cause is right on point with this particular case now under consideration by the Court. Again you have an individual who admits committing an offense and ties in the Defendant with the commission of that offense, but yet the United States Supreme Court clearly ruled that unless you can show the reliability of the Informant then you cannot obtain an Arrest or Search Warrant.

All of the cases cited in this Brief show quite clearly that there is no probable cause in any case where information is received from an Informant until it has been shown on the face of the Affidavit that said Informant has been proved to be reliable and that his information can be relied upon.

## II

WHEN A SEARCH WARRANT SPECIFICALLY DETAILS WHICH PROPERTY IS TO BE SEIZED UNDER SAID WARRANT, EVEN IF SAID WARRANT IS VALID AND EVEN IF IT IS PROPERLY EXECUTED, PROPERTY NOT NAMED IN THE WARRANT CANNOT BE SEIZED UNDER THE AUTHORITY OF SAID WARRANT, WITHOUT VIOLATING THE PETITIONER'S RIGHTS UNDER THE FOURTH, FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The fourth amendment to the U. S. Constitution, as well as Sec. 22 of the Fla. Constitution, require that a Search Warrant particularly describe the property or thing to be seized.

This provision is set forth for the purpose of preventing the issuance of general Warrants which permit law-enforcement officers to exercise discretion as to what shall or shall not be seized under a Warrant.

In the case of **Marron vs. United States,** 275 U.S. 192, 48 S.Ct. 74, (1927), the United States Supreme Court condemned the issuance of general Warrants and stated the law thusly:

> "The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer."

It is clear that in this case property not named in the warrant was seized.

## CONCLUSION

Petitioner respectfully submits that under the law previously cited the illegally obtained evidence used to convict the Petitioner herein constituted a violation of his rights under the Constitution of the State of Florida, and the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States.

Respectfully submitted,

GERALD KOGAN
*Attorney for Petitioner*
1201 Biscayne Building
19 West Flagler Street
Miami, Florida 33130

# APPENDIX

## APPENDIX A

IN THE CRIMINAL COURT OF RECORD, in and for Dade County, State of Florida, October Term, 1966.

THE STATE OF FLORIDA

vs.

BERNIE LUDWIG

**INFORMATION FOR BUYING, RECEIVING OR CONCEALING STOLEN PROPERTY**

(SIX COUNTS)

Filed Dec. 5, 1966

J. F. McCracken, Clerk JT

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, information makes that BERNIE LUDWIG on the 13th day of March, 1966, in the County and State aforesaid, did unlawfully, knowingly and feloniously buy, receive or aid in the concealment of certain stolen property, to-wit:

**Miscellaneous Silverware**

the property of MR. AND MRS. FRANK GODSEY, which said property the defendant well knew to have been stolen, in violation of 811.16 Florida Statutes, contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Florida.

## COUNT TWO

And RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, further information makes that BERNIE LUDWIG on the 13th day of March, 1966, in the County and State aforesaid, did unlawfully, knowingly and feloniously buy, receive or aid in the concealment of certain stolen property, to-wit:

**One (1) Cameo Broach**

the property of MRS. NATHAN ESTROFF, which said property the defendant

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well knew to have been stolen, in violation of 811.16 Florida Statutes, contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Florida.

## COUNT THREE

And RICHARD E. GERSTEIN, STATE ATTORNEY of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, further information makes that BERNIE LUDWIG on the 13th day of March, 1966, in the County and State aforesaid, did unlawfully, knowingly and feloniously buy, receive or aid in the concealment of certain stolen property, to-wit:

**Eighty-Four (84) Pieces of Silverware,**

the property of WILLIAM HARGRAVE, which said property the defendant well knew to have been stolen, in violation of 811.16 Florida Statutes, contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Florida.

## COUNT FOUR

And RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, further information makes that BERNIE LUDWIG on the 13th day of March, 1966, in the County and State aforesaid, did unlawfully, knowingly and feloniously buy, receive or aid in the concealment of certain stolen property, to-wit:

**One (1) Fur Coat;**
**One (1) Fur Jacket and**
**One (1) Fur Stole,**

the property of MARGARET C. PETERSEN, which said property the defendant

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well knew to have been stolen, in violation of 811.16 Florida Statutes, contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Florida.

## COUNT FIVE

And RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, further information makes that BERNIE LUDWIG on the 13th day of March, 1966, in the County and State aforesaid, did unlawfully, knowingly and feloniously buy, receive or aid in the concealment of certain stolen property, to-wit:

**One (1) Gray Fur Piece and Miscellaneous Silverware,**

the property of MRS. JESS GILLUM, which said property the defendant well knew to have been stolen, in violation of 811.16 Florida Statutes, contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Florida.

**COUNT SIX**

And RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, further information makes that BERNIE LUDWIG on the 13th day of March, 1966, in the County and State aforesaid, did unlawfully, knowingly and feloniously buy, receive or aid in the concealment of certain stolen property, to-wit:

**One (1) Fur Stole**

the property of MRS. J. M. WALKER, JR., which said property the defendant well knew to have been stolen, in violation of 811.16 Florida Statutes,

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contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

/s/ RICHARD E. GERSTEIN
State Attorney, Eleventh Judicial
Circuit of Florida

STATE OF FLORIDA:

COUNTY OF DADE:

Personally appeared before me, RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, who, being first duly sworn, says that the allegations set forth in the within Information are based upon facts that have been sworn to as true, and which facts, if true, would constitute the offenses therein charged.

/s/ RICHARD E. GERSTEIN
State Attorney, Eleventh Judicial
Circuit of Florida

Sworn to and subscribed before me this 29th day of November, 1966.

J. F. McCracken, Clerk
Criminal Court of Record,
Dade County, Florida

By: /s/ B. KAMBAS, D.C.

(SEAL, CRIMINAL COURT OF RECORD)

Defendant BERNIE LUDWIG, arraigned in open Court on the within Information and pleaded .....

.....

Deputy Clerk, Criminal Court of
Record, Dade County, Florida

App. 6

Case No. 66-3086 JT

Criminal Court of Record

DADE COUNTY, FLORIDA

THE STATE OF FLORIDA

vs.

BERNIE LUDWIG

**INFORMATION FOR BUYING, RECEIVING OR CONCEALING STOLEN PROPERTY**

**(SIX COUNTS)**

**WITNESSES FOR THE STATE**

1. Frank Godsey and
2. Mrs. Frank Godsey,
   311 Cordova Blvd.
   St. Petersburg, Fla.
3. Joe Fernandez, PSD
4. James Coon and
5. Herbert Kuppersmith, PSD

CDE/hht
11/29/66
Case No. 66-3086 JT

JAN. 16, 1967

WAIVED TRIAL BY JURY

/s/ BERNIE LUDWIG

## APPENDIX B

IN THE CRIMINAL COURT OF RECORD IN AND FOR DADE COUNTY, FLORIDA

NO. 66-3086

THE STATE OF FLORIDA

vs.

BERNIE LUDWIG,

## MOTION TO QUASH AND SUPPRESS

Filed Dec. 21, 1966

J. F. McCracken, Clerk K

The Defendant, BERNIE LUDWIG, would show unto this Court that certain articles, goods and paraphernalia were taken by Dade County Police Officers from premises under the control of the Defendant under purported authority of a purported search warrant in violation of this Defendant's rights under Sections 12 and 22 of the Declaration of Rights, Constitution of the State of Florida, of the 4th, 5th and 14th Amendments to the Constitution of the United States.

1. That the purported affidavit and said purported search warrant failed to show probable cause and no probable cause for the issuance of either existed.

2. That said purported affidavit and search warrant are insufficient in law and in fact.

3. That said purported search warrant fails to show jurisdiction on its face.

4. That said purported search warrant is defective in describing the property sought to be seized.

5. That the property, goods, and paraphernalia taken was the result of an illegal, unauthorized and unwarranted search and seizure.

6. That the seizure of goods and paraphernalia under the purported use of a purported search warrant was unauthorized and illegal so as to constitute "blanket" warrant and an illegal general search.

7. That said purported affidavit and purported search warrant failed to comply with Florida Statutes Annotated, Sections 933.07 and 933.18.

8. That the execution of said purported search warrant by Police Officers was illegal and improper.

9. That the execution of said purported search warrant, the actions of the Police Officers under the purported search warrant and the abuses thereunder.

WHEREFORE, the premises considered, the Defendant moves that this Court quash the purported search warrant and suppress the use of any good, articles, paraphernalia or any other matter of any type so seized, as evidence, against the Defendant.

/s/ BERNIE LUDWIG
BERNIE LUDWIG

SWORN TO AND SUBSCRIBED before me this the 20 day of December, 1966.

/s/ JO CAHOON
NOTARY PUBLIC, State of Florida

NOTARY PUBLIC, STATE of FLORIDA at LARGE
MY COMMISSION EXPIRES FEB. 15, 1970
BONDED THRU MAYNARD BONDING AGENCY

(NOTARIAL SEAL AFFIXED)

I HEREBY CERTIFY that a true copy of the foregoing Motion to Quash and Suppress was mailed to the Office of Richard E. Gerstein, State Attorney, 6th Floor, Metropolitan Justice Building, Miami, Florida, this the 20 day of DECEMBER, 1966.

/s/ STEPHEN F. BAZZANO
STEPHEN F. BAZZANO
Attorney for Defendant
906 Ainsley Building
Miami, Florida

## APPENDIX C

(And on April 14, 1967, the Clerk of the Court entered in Criminal Court of Record Minute Book No. 241, on Page 101, the following minutes, to-wit:)

DIVISION "A" April 14, 1967

STATE OF FLORIDA

vs.

BERNIE LUDWIG

#66-3086

**BUYING, RECEIVING OR CONCEALING STOLEN PROPERTY (SIX COUNTS)**

Charles D. Edelstein, Assistant State Attorney.
Gerald Kogan, Counsel for the Defendant.
Reported by Harvey Hartman.

All the witnesses and the defendant were sworn.

State's Witnesses:

1. Joseph Fernandez

Gerald Kogan, Counsel for the Defendant, orally presented a Motion to Quash the Affidavit for Search Warrant, which Motion the Court denied.

Counsel for the Defendant orally presented a Motion to Quash the Search Warrant, which Motion the Court denied.

The Court admitted into evidence the following items:

Affidavit for Search Warrant
and Search Warrant ..... State's Exhibit #1

Charles D. Edelstein, Assistant State Attorney, orally presented a Motion to Consolidate the Instant Case with Case No. 66-2954 for Trial, which Motion the Court denied.

Counsel for the Defendant orally presented a Motion to Suppress the Evidence, upon which Motion the Court reserved ruling.

## APPENDIX D

(And on October 26, 1967, the Clerk of the Court entered in Criminal Court of Record Minute Book No. 262, on Page 452, the following minutes, to-wit:)

DIVISION "A" October 26, 1967

STATE OF FLORIDA

vs.

BERNIE LUDWIG

#66-3086

**BUYING, RECEIVING OR CONCEALING STOLEN PROPERTY (SIX COUNTS)**

Charles David Edelstein, Assistant State Attorney.
Gerald Kogan, Counsel for the Defendant.
Reported by Harvey Hartman.

The Court denied the Defendant's pending Motion to Suppress.

## APPENDIX E

#66-3086 & 66-3087

## AFFIDAVIT FOR SEARCH WARRANT

Filed Mar. 22, 1966

J. F. McCracken, Clerk

STATE OF FLORIDA )
) SS
COUNTY OF DADE )

Before me, JAMES LAWRENCE KING, one of the Circuit Judges of the 11th Judicial Circuit of Florida, personally appeared JOSEPH FERNANDEZ, Deputy Sheriff, Dade County, Florida, who first being duly cautioned and sworn according to law, upon his oath deposes and says that he, JOSEPH FERNANDEZ, The Affiant, has received ~~inform~~information from Antonio P. Guerra, through Inspector Bland of the Tampa, Florida, Police Department, that stolen jewelry, that is to say, jewelry stolen from the residence of Kent McKinley, 203 South Washington Drive, Sarasota, Florida, on March 9, 1966 and described as one diamond earring, Tiffany, one sapphire, diamond and platinum flexible bracelet, one twin pear shaped ring containing one pink diamond and one white diamond, two sapphire and diamond clips containing forty sapphires and thirty baguette diamonds-one round diamond, one ruby emerald, one necklace containing one aquamarine stone weighing 24.53 carats and other assorted jewelry, is being stored on the premises known and described as Apartment #113 located within a three story apartment building, color off-white with red barrel

tile roof. This apartment building is located at 333 University Drive, Coral Gables, Dade County, Florida; and that Apartment #113 is located on the first floor of the above described apartment building. The above described apartment is listed on the U. S. Postal Office Mail Box in the names of H. L. Sadacca and A. V. Sadacca. The above described apartment building is also known as the San Sebastian Apts.

The Affiant further states that Inspector Bland contacted him on March 13, 1966 and stated that Antonio P. Guerra had admitted his participation in the above mentioned theft. The Affiant further states that Inspector Bland was told by Guerra that Guerra had traveled to the above mentioned premises in Coral Gables, Florida and that in his presence, in Apartment #113, the jewelry stolen from McKinley was sold to a person known only to Guerra as Bernard Ludwig for $23,000.

The Affiant further states that Bland was told by Guerra that the resident of this apartment is a person known only to him as Ben and that Ben is a partner of Bernard Ludwig in the operation of the Pan Am Jewelry Exchange, Miami, Florida.

The Affiant has good reason to believe, and does believe, that stolen jewelry, that is to say, jewelry stolen from the residence of Kent McKinley, 203 South Washington Drive, Sarasota, Florida, on March 9, 1966 and described as one diamond earring, Tiffany, one sapphire, diamond and platinum flexible bracelet, one twin pear shaped ring containing one pink diamond and one white diamond, two sapphire and diamond clips containing forty sapphires and thirty baguette diamonds-one round dia-

mond, one ruby and diamond bracelet, diamond and emerald ring containing two diamonds and one emerald, one necklace containing one aquamarine stone weighing 24.53 carats and other assorted jewelry, will be found on the aforesaid premises and the aforesaid premises are being unlawfully used for the purpose of storing stolen jewelry.

Wherefore, Affiant prays that a search warrant be issued according to law.

/s/ JOSEPH F. FERNANDEZ
Affiant

Sworn to and subscribed before me this 13 day of March, A.D. 1966.

/s/ JAMES LAWRENCE KING
Judge of the Circuit Court
of the 11th Judicial Circuit
of Florida in and for the
County of Dade.

## APPENDIX F

## SEARCH WARRANT

STATE OF FLORIDA )
) SS
COUNTY OF DADE )

IN THE NAME OF THE STATE OF FLORIDA:

To: The Sheriff, Deputy Sheriffs or Constables of Dade County, Florida, or any police officer of Coral Gables, Dade County, Florida.

WHEREAS, **Joseph Fernandez, Deputy Sheriff, Dade County Sheriff's Office** has this day made oath before me that he has probable cause to believe, and does believe, that a certain premises known or described as **Apartment #113 located within a three story apartment building, color off-white with red barrel tile roof. This apartment building is located at 333 University Drive, Coral Gables, Dade County, Florida; and that Apartment #113 is located on the first floor of the above described apartment building. The above described apartment is listed on the U.S. Postal Office Mail Box in the names of H. L. SADACCA and A. V. SADACCA. The above described apartment building is also known as the San Sebastian Apts.** The above described apartment has been and is being used by a person, known only to the Affiant as **Ben** for the purpose of storing stolen jewelry, that is to say, **jewelry stolen from the residence of KENT McKINLEY, 203 South Washington Drive, Sarasota, Florida, on March 9, 1966 and described as one diamond earring, Tiffany, one sapphire, diamond and platinum flexible bracelet, one**

**twin pear shaped ring containing one pink diamond and one white diamond, two sapphire and diamond clips containing forty sapphires and thirty baguette diamonds-one round diamond, one ruby and diamond bracelet, diamond and emerald ring containing two diamonds and one emerald, one necklace containing one aquamarine stone weighing 24.53 carats and other assorted jewelry,** contrary to the laws of the State of Florida.

THESE PRESENTS, THEREFORE, ARE TO COMMAND YOU, with proper and necessary assistance, either in the day-time or in the night-time, or on Sunday within ten days of the issuance hereof, to search said premises known or described as **Apartment #113 located within a three story apartment building, color off-white with red barrel tile roof. This apartment building is located at 333 University Drive, Coral Gables, Dade County, Florida; and that Apartment #113 is located on the first floor of the above described apartment building. The above described apartment is listed on the U. S. Postal Office Mail Box in the names of H. L. SADACCA and A. V. SADACCA. The above described apartment building is also known as the San Sebastian Apts.** AND THE PERSON OR ALL PERSONS THEREIN WHO SHALL BE CONNECTED WITH, OR SUSPECTED OF BEING CONNECTED WITH MAINTAINING OF SUCH STOLEN JEWELRY, THAT IS TO SAY, **jewelry stolen from the residence of KENT McKINLEY, 203 South Washington Drive, Sarasota, Florida, on March 9, 1966 and described as one diamond earring, Tiffany, one sapphire, diamond and platinum flexible bracelet, one twin pear shaped ring containing one pink diamond and one white diamond, two sapphire and diamond clips containing forty sapphires and thirty baguette diamonds-one round diamond, one**

**ruby and diamond bracelet, diamond and emerald ring containing two diamonds and one emerald, one necklace containing one aquamarine stone weighing 24.53 carats and other assorted jewelry,** and if the same, or any part thereof, shall be found, upon said search, you are to bring said goods or property so found, and also the body of all persons found therein connected with said stolen jewelry, that is to say, **jewelry stolen from the residence of KENT McKINLEY, 203 South Washington Drive, Sarasota, Florida, on March 9, 1966 and described as one diamond earring, Tiffany, one sapphire, diamond and platinum flexible bracelet, one twin pear shaped ring containing one pink diamond and one white diamond, two sapphire and diamond clips containing forty sapphires and thirty baguette diamonds-one round diamond, one ruby and diamond bracelet, diamond and emerald ring containing two diamonds and one emerald, one necklace containing one aquamarine stone weighing 24.53 carats and other assorted jewelry,** before a Court of competent jurisdiction to be dealt with according to law.

GIVEN UNDER MY HAND this 13 day of March, A.D., 1966.

/s/ JAMES LAWRENCE KING
Judge of the Circuit Court of
the 11th Judicial Circuit of
Florida, in and for the County
of Dade.

## APPENDIX G

STATE OF FLORIDA

vs.

BERNIE LUDWIG

Case No. 66-3086

**CHARGE, BUYING, RECEIVING OR CONCEALING STOLEN PROPERTY, etc.**

**JUDGMENT**

It appearing unto this Court that you, Bernie Ludwig, have been regularly tried and convicted of unlawfully buying, receiving or aiding in the concealment of stolen property well knowing the same to be stolen, as set forth in Counts One, Two, Three, Five and Six of the Information

IT IS THEREFORE THE JUDGMENT of the law and it is hereby adjudged that you are and stand convicted of the offenses as above set forth.

What have you to say why sentence should not now be imposed upon you?

Saying nothing that could influence the Court in its decision.

**SENTENCE**

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that you be imprisoned by confinement at

hard labor in the STATE PENITENTIARY for a term of Three (3) years.

DONE AND ORDERED in open Court at Miami, Dade County, Florida, this 5 day of January A. D. 1968.

/s/ JACK M. TURNER
Judge.

Filed this 5 day of January
A. D. 1968 and recorded in Criminal Court of Record, Minutes No. 269 on Page 351

J. F. McCracken, Clerk

By: MARY KRISSEL DIV. A__/__B____C____D____
Deputy Clerk

## APPENDIX H

IN THE CRIMINAL COURT OF RECORD IN AND FOR DADE COUNTY, FLORIDA.

NO. 66-3086

STATE OF FLORIDA,

Plaintiff,

vs.

BERNIE LUDWIG,

Defendant.

## MOTION FOR NEW TRIAL

COMES NOW the Defendant, BERNIE LUDWIG, by and through his undersigned attorney, and moves this Honorable Court for a new trial on the following grounds:

1. That the verdict of the Court is contrary to law.

2. That the verdict of the Court is contrary to the evidence.

3. That the verdict of the Court is contrary to both, the law and the evidence.

4. That the Court erred in denying the Defendant's Motion to Suppress all evidence seized from the residence known as Apartment 113 of the San Sebastian Apartments, 333 University Drive, Coral Gables, Florida on March 14, 1966.

5. That the Court erred in failing to grant the Defendant's Motion to Quash Search Warrant issued in this cause on March 13, 1966 by the Honorable James Lawrence King, Judge of the Circuit Court in and for Dade County, Florida.

6. That the Court erred in admitting into evidence the property taken from Apartment 113, San Sebastian Apartments, 333 University Drive, Coral Gables, Florida pursuant to the aforementioned search warrant issued by Judge King.

7. That the Court erred in failing to grant the Defendant's Motion for a Directed Verdict at the conclusion of the State's case.

8. That the Court erred in refusing to grant the Defendant's Motion for a Directed Verdict at the conclusion of all the evidence.

GERALD KOGAN
Attorney for Defendant
1201 Biscayne Building
Miami, Florida 33130

I HEREBY CERTIFY that a copy of the foregoing Motion for New Trial was mailed to RICHARD E. G[illegible]STEIN, State Attorney, 1351 N. W. 12th Street, Miami, Florida this ____ day of October, 1967.

GERALD KOGAN

## APPENDIX I

## CLERKS MINUTES

#66-3086

STATE OF FLORIDA
vs.
BERNIE LUDWIG

**BUYING, RECEIVING OR CONCEALING STOLEN PROPERTY (SIX COUNTS)**

Charles D. Edelstein, Assistant State Attorney.
Gerald Kogan, Counsel for the Defendant.
Reported by Sylvia Fierman.

Continued on next page

BOOK 269 PAGE 630

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DIVISION "A" January 5, 1968

Counsel for the Defendant presented a Motion for New Trial, which Motion the Court denied.

## APPENDIX J

IN THE CRIMINAL COURT OF RECORD, IN AND FOR DADE COUNTY, FLORIDA

NO. 66-3086

STATE OF FLORIDA,

Plaintiff,

vs.

BERNIE LUDWIG,

Defendant.

## NOTICE OF APPEAL

Filed Jan. 5, 1968

J. F. McCracken, Clerk H

BERNIE LUDWIG, Defendant, takes and enters his appeal to the Third District Court of Appeals of Florida to review the judgment and sentence of the Criminal Court of Record of Dade County, Florida, dated the 5th day of January, 1968, and rendered on the same date wherein the Defendant was adjudicated Guilty of the crime of Buying, Receiving or Concealing Stolen Property.

All parties to said cause are called upon to take notice of the entry of this appeal.

/s/ GERALD KOGAN
GERALD KOGAN

Attorney for Defendant
1201 Biscayne Building
Miami, Florida 33130

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal was mailed to RICHARD E. GERSTEIN, State Attorney, 1351 N. W. 12th Street, Miami, Florida this 5th day of January, 1968.

/s/ GERALD KOGAN
GERALD KOGAN

Filed this 5 day of Jan.
A. D. 1968 and recorded in
Criminal Court of Record,
Minutes No. 269 on Page 475

J. F. McCRAKEN, CLERK
By HELEN H. FISCHER, Deputy

## APPENDIX K

IN THE CRIMINAL COURT OF RECORD, IN AND FOR DADE COUNTY, FLORIDA.

NO. 66-3086

STATE OF FLORIDA,

Plaintiff,

vs.

BERNIE LUDWIG,

Defendant.

Filed Jan. 24, 1968

J. F. McCracken, Clerk H

## ASSIGNMENTS OF ERROR, DIRECTIONS TO CLERK, DESIGNATION OF NECESSARY PARTS OF TRANSCRIBED TESTIMONY

### ASSIGNMENTS OF ERROR

The Defendant, BERNIE LUDWIG, by his undersigned attorney, makes the following Assignments of Error upon which he will rely for reversal of the Verdict, Judgment and Sentence herein:

1. The Court erred in denying the Defendant's Motion to Quash the Information on the grounds of immunity.

2. The Court erred in denying the Defendant's Motion to Suppress all evidence seized from the residence, occupied by the Defendant, known as Apartment 113 of

the San Sebastian Apartments, 333 University Drive, Coral Gables, Dade County, Florida on March 14, 1966.

3. The Court erred in failing to grant the Defendant's Motion to Quash the Search Warrant issued in this cause on March 13, 1966 by the Honorable James Lawrence King, Judge of the Circuit Court in and for Dade County, Florida for the residence known as Apartment 113 of the San Sebastian Apartments, 333 University Drive, Coral Gables, Dade County, Florida.

4. The Court erred in admitting into evidence the property taken from the residence known as Apartment 113 of the San Sebastian Apartments, 333 University Drive, Coral Gables, Dade County, Florida pursuant to the aforementioned search warrant issued by Judge King.

5. The Court erred in failing to grant the Defendant's Motion for a Directed Verdict of Acquittal at the conclusion of the State's case.

6. The Court erred in refusing to grant the Defendant's Motion for a Directed Verdict of Acquittal at the conclusion of all the evidence.

7. The Court erred in denying the Defendant's Motion for a New Trial.

## DIRECTIONS TO CLERK

The Defendant, by his undersigned attorney, as and for his Directions to the Clerk in making up the Transcript of Record on Appeal in this case, the following should be included:

1. Information

2. Pleas of Defendant (Minutes)

3. Motion to Quash Information on grounds of immunity

4. Order Denying Motion to Quash Information on grounds of immunity (Minutes)

5. Motion to Suppress

6. Order Denying Motion to Suppress (Minutes)

7. Reporter's Transcript of Testimony on Motion to Suppress to be supplied later

8. Reporter's Transcript of Testimony on Trial to be supplied later

9. Verdict, Judgment and Sentence

10. Motion for New Trial

11. Order Denying Motion for New Trial (Minutes)

12. Notice of Appeal

13. These Assignments of Error and Directions to Clerk

14. All Exhibits introduced at Trial and at Motion to Suppress

## DESIGNATION OF NECESSARY PARTS OF TRANSCRIBED TESTIMONY

The Defendant, by his undersigned attorney, as and for his Designation Of Necessary Parts Of Transcribed Testimony, herein, directs that the entire Transcript of

the Trial, together with a Transcript of the Testimony on the Motion to Suppress, be included as part of the original Record herein.

/s/ GERALD KOGAN
GERALD KOGAN
Attorney for Defendant
1201 Biscayne Building
Miami, Florida 33130

I HEREBY CERTIFY that a copy of the above Assignments of Error, Directions to Clerk, Designation of Necessary Parts of Transcribed Testimony, was mailed to RICHARD E. GERSTEIN, State Attorney, 1351 N. W. 12th Street, Miami, Florida this 24th day of January, 1968.

/s/ GERALD KOGAN
GERALD KOGAN

## APPENDIX L

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT JULY TERM, A.D. 1968

CASE NO. 68-37

BERNIE LUDWIG,

*Appellant,*

*vs.*

THE STATE OF FLORIDA,

*Appellee.*

Opinion filed November 26, 1968.

An Appeal from the Criminal Court of Record for Dade County, Jack M. Turner, Judge.

Gerald Kogan, for appellant.

Earl Faircloth, Attorney General, and Melvin Grossman, Assistant Attorney General, for appellee.

Before CHARLES CARROLL, C.J., and PEARSON and SWANN, JJ.

PEARSON, Judge.

The appellant was tried by the court and found guilty of knowingly buying, receiving or aiding in the concealment of stolen property in contravention of § 811.16,

Fla.Stat. The evidence admitted at trial was seized at the appellant's apartment by officers armed with a search warrant. On this appeal Ludwig attacks rulings of the trial court which: (1) sustained the validity of the search warrant; (2) sustained the validity of the seizure of property not specifically described in the search warrant.

The issuance of the warrant was based on the affidavit of a Dade County Deputy Sheriff. The deputy swore, among other things, that an inspector of the Tampa Police Department informed him that a named individual had informed him (the inspector) that he had participated in a jewelry theft and thereafter had sold specifically described pieces of jewelry to the appellant at the appellant's apartment in Coral Gables. The deputy made no allegation as to the reliability of the inspector or of the person who had informed the inspector. A circuit court judge issued a search warrant authorizing appropriate law enforcement officers to search the appellant's apartment for specifically described jewelry—the same jewelry which had been specifically described in the affidavit—and to seize it. The affiant deputy and other officers served the search warrant upon the appellant and searched his apartment. They did not find any of the jewelry described in the warrant. However, they did find and seize other property which had not been specifically mentioned in the search warrant but which the officers believed to be stolen property. The appellant's conviction was based on this seized property.

The appellant contends first that:

"AN AFFIDAVIT FOR A SEARCH WARRANT THAT IS BASED UPON INFORMATION RECEIVED FROM AN INFORMANT

MUST ALLEGE THE RELIABILITY OF THE INFORMANT BEFORE A VALID SEARCH WARRANT CAN BE ISSUED."

In United States v. Ventresca, 380 U.S. 102, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965), the Court, through Mr. Justice Goldberg, stated:

> "If the teachings of the Court's cases are to be followed and the constitutional policy served, affidavits for search warrants, such as the one involved here, must be tested and interpreted by magistrates and courts in a common-sense and realistic fashion. They are normally drafted by non lawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area. A grudging or negative attitude by reviewing courts toward warrants will tend to discourage police officers from submitting their evidence to a judicial officer before acting.
>
> "This is not to say that probable cause can be made out by affidavits which are purely conclusory, stating only the affiant's or an informer's belief that probable cause exists without detailing any of the 'underlying circumstances' upon which that belief is based. See Aguilar v. Texas . . . . Recital of some of the underlying circumstances in the affidavit is essential if the magistrate is to perform his detached function and not serve merely as a rubber stamp for the police. However, where these circumstances are

> detailed, **where reason for crediting the source of the information is given,** and when a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner. Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants." (Emphasis added.) 380 U.S. at 108, 109.

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We conclude that the portion of the foregoing statement we emphasized does not require an affiant to allege that his informant is reliable because the affidavit involved in the Ventresca case (Appendix, 380 U.S. at 112-116) does not include such an allegation. We therefore hold that a valid search warrant may be issued even though the affidavit upon which it is based does not include an allegation that the affiant has received his information from a reliable source. We think the requisite "reason for crediting the source of the information" may be inferred from the allegations in the affidavit and the other circumstances of a given case. Cf. Wooten v. United States, 380 F.2d 230 (5th Cir. 1967), cert. denied, 389 U.S. 942.

The next point concerns the legality of the seizure of the property not mentioned in the search warrant. As a general rule, law enforcement officers may not lawfully seize property unless it is specifically described in a search warrant as being the object of the search

and seizure. The appellant recognizes that contraband (e.g., narcotics, gambling paraphernalia, stolen goods) is a class of property excepted from this rule. He argues that before law enforcement officers may classify goods as being stolen property, hence contraband, and hence subject to the exception to the general rule, they must **know** that the goods are stolen. We cannot agree.

A law enforcement officer may lawfully seize a person without an arrest warrant "When he has reasonable ground to believe that a felony has been . . . . committed and reasonable ground to believe that the person to be arrested has committed . . . it." §901.15(3), Fla.Stat. If a law enforcement officer may lawfully seize a person without **knowing** that he has committed a felony or that a felony has in fact been committed, the officer may surely seize property without **knowing** it is stolen, if he has probable cause (or reasonable ground)[1] to believe it is stolen property. It is inconceivable that the law provides greater protection to the property of an individual than it does to his liberty. We therefore hold that a law enforcement officer conducting a search under a valid warrant may lawfully seize property not specifically described in the warrant if he has probable cause to believe it to be stolen property. He does have such probable cause if a reasonable man knowing all the facts the officer knows would believe under all the circumstances that the property is stolen property. See Rogers v. State, 158 Fla. 582, 30 So.2d 625 (1947).

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[1]The terms are synonymous. See Carroll v. United States, 267 U.S. 132, 161 (1925).

The following excerpt from a pre-trial hearing clearly demonstrates that the officers in the case before us had probable cause to believe the property seized at the appellant's apartment was stolen property:

"Q [By Defense Counsel] Why did you take that property which was not described in your warrant?

A The reason we took this property and impounded it is because there was a large quantity of items among the property which bore initials or names which were not either the name of the person in whom the apartment was listed, H. L. Sadaka, or—excuse me—A. V. Sadaka or, the occupant, Bernie Ludwig and, therefore, we felt that we had probable cause or reason to believe that this property was stolen.

"There were also a large quantity of silverware and fur coats. Among the fur coats there were items which had out-of-town addresses or labels. Some had no labels. Some had the names or initials of other persons which were not the same as those of either Sadaka or Ludwig, including one which is listed on page 8, a light and dark brown fur-type jacket, with brown lining and flowered design with initials, 'M. R. W.', bearing label of Kreuger's, New Orleans.

"We had reason to believe that possibly this might be the same as taken from a burglary which occurred in New Orleans on February 11, 1966, at the residence of Joseph Steiner and we seized it for the purpose of identification."

Affirmed.

## APPENDIX M

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT, JULY TERM, A. D. 1968,
THURSDAY, DECEMBER 19, 1968

CASE NO. 68-37

BERNIE LUDWIG,

*Appellant,*

vs.

THE STATE OF FLORIDA,

*Appellee.*

Counsel for appellant having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:
WILLIAM P. CARTER
Clerk District Court of
Appeal, Third District

cc: Gerald Kogan
Melvin Grossman
J. F. McCracken

(THE MANDATE IN THE ABOVE STYLED CAUSE HAS TODAY BEEN ISSUED AND MAILED TO THE CLERK OF THE CRIMINAL COURT OF RECORD FOR DADE COUNTY, FLORIDA)

## APPENDIX N

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1969

TUESDAY, APRIL 29, 1969

CASE NO. 38,178
DISTRICT COURT OF APPEAL,
THIRD DISTRICT

BERNIE LUDWIG,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

A True Copy

TEST:
Sid J. White
Clerk Supreme Court.

CC: Hon. W. P. Carter
Hon. J. F. McCracken
Hon. Gerald Kogan
Hon. Earl Faircloth, Tallahassee
Hon. Melvin Grossman, Miami

## APPENDIX O

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM A. D. 1969

THURSDAY, JUNE 12, A.D. 1969

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CASE NO. 38,178

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BERNIE LUDWIG,

Petitioner

vs.

STATE OF FLORIDA,

Respondent

Petition for rehearing filed by Attorney for Petitioner has been considered and is hereby denied.

A TRUE COPY,

TEST:
SID J. WHITE
CLERK SUPREME COURT
ELLA ONIELL WILKINS
Chief Deputy Clerk

(I HAVE TODAY MAILED TO THE CLERK OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, ORDER OF APRIL 29, A.D. 1969 IN THE ABOVE CAUSE)

SUPREME COURT, U. S.

FILED

NOV 4 1969

JOHN F. DAVIS, CLERK

in the

# Supreme Court

of the

# United States

OCTOBER TERM, 1969

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## No. 340

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BERNIE LUDWIG,

*Petitioner,*

*vs.*

STATE OF FLORIDA,

*Respondent.*

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**On**

**Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District**

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EARL FAIRCLOTH
Attorney General
State of Florida

MELVIN B. GROSSMAN
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MIAMI REVIEW — 371-4853 — 377-3721

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# In the Supreme Court of the United States

OCTOBER TERM, 1969

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## No. 340

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BERNIE LUDWIG,

*Petitioner,*

*vs.*

STATE OF FLORIDA,

*Respondent.*

---

**On**
**Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District**

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## OPINIONS BELOW

The opinion of the District Court of Appeal of Florida, Third District, is reported at 215 So.2d 898 (3rd D.C.A. Fla., 1968). The opinion of the Supreme Court of Florida is reported at 225 So.2d 536 (Fla., 1969).

## QUESTIONS PRESENTED

The State respectfully rephrases the questions presented as follows:

### POINT ONE

WHETHER AN AFFIDAVIT FOR A SEARCH WARRANT NEED FORMALLY RECITE THE RELIABILITY OF AN INFORMANT IN ADDITION TO A DETAILED RECITAL OF THE UNDERLYING CIRCUMSTANCES.

### POINT TWO

WHETHER A LAW ENFORCEMENT OFFICER MAY SEIZE STOLEN PROPERTY OBSERVED DURING THE EXECUTION OF A VALID SEARCH WARRANT.

## ARGUMENT

### POINT ONE

AN AFFIDAVIT FOR A SEARCH WARRANT NEED NOT FORMALLY RECITE THE RELIABILITY OF AN INFORMANT IN ADDITION TO A DETAILED RECITAL OF THE UNDERLYING CIRCUMSTANCES.

The petitioner contends initially to this Court that his rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution were in fact violated by failure of the affidavit for search warrant (Petitioner's Exhibit E) to allege the reliability of the informant. The State of Florida would most respectfully submit to this Honorable Court that the defendant's view of the law is incorrect.

In *United States v. Ventresca*, 380 U.S. 102, 85 S.Ct. 741, 13 L.Ed. 2d 684 (1965), this Court stated that the underlying circumstances must be recited in the affidavit if a magistrate issuing a search warrant is to properly perform his function. This Court, speaking through Mr. Justice Goldberg, then went on to say,

> "However, where these circumstances are detailed, where reasons for crediting the source of the information is given, and when a magistrate has found probable cause, the court should not invalidate the warrant by interpreting the affidavit in hypertechnical, rather than a common sense, manner."

This Court's opinion in *Ventresca*, supra, is especially applicable in the instant case, in as much as in Ventresca the affidavit for the search warrant did not contain the allegation of reliability which the instant defendant insists is mandatory. It is respectfully submitted that the defendant's attack upon the instant affidavit for search warrant is nothing other than such a "hypertechnical" attack.

His argument, in effect, is that regardless of the quantity of underlying circumstances contained in the affidavit, a search warrant cannot issue unless the affidavit contains an affirmation of the reliability of the source of the information. The State of Florida would submit that the instant affidavit did not need such affirmation.

The officer who swore out the affidavit for the search warrant included in said affidavit a wealth of details: Firstly, the information was derived from the inculpatory statements of someone who had not only stolen the property listed in the affidavit, but who had personally attended the sale to the instant defendant at the particular location specified in the affidavit. Thus the affidavit contained extensive detail obtained from inculpatory statements, and the magistrate in the instant case clearly had probable cause before him for the issuance of the warrant. C.F., *Wooten v United States*, 380 F.2d 230, (Fifth Cir., 1967).

The State might also note in passing that despite the defendant's assertions that the decision of the District Court of Appeal of Florida, Third District, (Petitioner's Exhibit L), flies in the face of this Court's opinion in *Wong Sun v United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441, (1963). This Court in Wong Sun clearly was interested not so much with the reliability of the informer as with the vagueness and sparcity of the information which he gave to the law enforcement officials. See, *Wong Sun v United States*, supra, at 480-81. The State would, therefore, respectfully submit to this Honorable Court that the affidavit was clearly sufficient in light of this Court's decision in *United States v Ventresca*, supra, and that in no way can it be said that any of the defendant's constitutional rights were violated.

## POINT TWO

### A LAW ENFORCEMENT OFFICER MAY SEIZE STOLEN PROPERTY OBSERVED DURING THE EXECUTION OF A VALID SEARCH WARRANT.

The defendant also contends in his petition that law enforcement officers may not seize property not named specifically in a search warrant even though they are on the premises pursuant to the service of a valid search warrant. The State would most respectfully dispute that contention. The courts of the State of Florida have consistently ruled that officers who are lawfully on the premises may seize property of a contraband nature. *Joyner v City of Lakeland*, 90 So.2d 118, (Fla., 1956); *Bretti v. State*, 192 So.2d 6, (3rd D.C.A. Fla., 1966). This rule of law is shared with the courts of other jurisdictions, including the Federal courts. See e.g., *United States v Eisner*, 297 F.2d 595, (6th Cir., 1962); *Johnson v United States*, 293 F.2d 539, (D.C. Cir., 1969); *People v Roberts*, 47 Cal.2d 374, 303 P.2d 721 (1956); *Nestor v State*, 243 Md. 438, 221 A.2d 365 (1966); *Brooks v State*, 235 Md. 23, 200 A.2d 177 (1964); *Williams v State*, 216 Miss. 158 61 So.2d 793 (1953); *State v McKindel*, 148 Wash. 237, 268 P. 593 (1928).

The State of Florida would also point that this Honorable Court in *Warden v Hayden*, 387 U.S. 294, 18 L.Ed. 2d 782, 87 S.Ct. 1642 (1967), that where officers are lawfully on the premises they could seize "mere evidence" of a crime. The State of Florida would respectfully submit that if it is also permissible to seize mere evidence without a search warrant then it is also permissible to seize the very fruits of a crime.

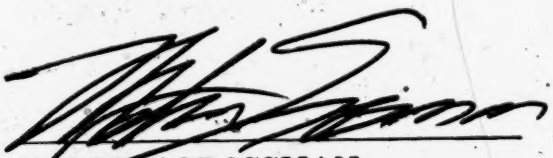
Under Florida Statute Section 901.15 (3), a law enforcement officer may lawfully seize a person without an arrest warrant, "when he has reasonable grounds to believe that a felony has been . . . committed and reasonable grounds to believe that the person to be arrested has committed . . . it." In the instant cause at the hearing on the defendant's motion to suppress the officer who served the search warrant related facts and circumstances which clearly established that there was probable cause to believe the property was stolen. As the District Court of Appeal of Florida, Third District, pointed out, "If a law enforcement officer may lawfully seize a person without *knowing* that he has committed a felony or that a felony has in fact been committed, the officer may surely seize property without *knowing* it is stolen, if he had probable cause (or reasonable ground) to believe it is stolen property."

## CONCLUSION

It is respectfully submitted that the decision of the District Court of Appeal of Florida, Third District is in complete accord with the applicable decisions of this Court and that the instant petition for writ of certiorari should be denied.

Respectfully submitted,

EARL FAIRCLOTH
*Attorney General*
Tallahassee, Florida



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**IN THE**
**SUPREME COURT**
**OF THE**
**UNITED STATES**

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**CASE NO. 340**

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**BERNIE LUDWIG,**

***Petitioner,***

***vs.***

**THE STATE OF FLORIDA,**

***Respondent.***

STATE OF FLORIDA :
: SS
COUNTY OF DADE :

**AFFIDAVIT OF SERVICE**

I, MELVIN B. GROSSMAN, Assistant Attorney General, State of Florida, first being duly sworn according to law, do depose and say:

I HEREBY CERTIFY that three copies of Brief for the Respondent to the Supreme Court of the United States was served upon HONORABLE GERALD KOGAN, At-

torney for Petitioner, 1201 Biscayne Building, 19 West Flagler Street, Miami, Florida 33130, by mailing the copies of same to him by United States Mail, First Class postage prepaid, pursuant to Rule 33 of this Court, this 31st day of October, 1969.

MELVIN B. GROSSMAN
*Assistant Attorney General*

Sworn to and subscribed before me at Miami, Dade County, Florida, this 31 day of October, 1969.

NOTARY PUBLIC
State of Florida at Large
My Commission Expires: 3/30/71

SUPREME COURT, U. S.

DEC 11 1969

JOHN F. DAVIS, CLERK

# in the Supreme Court of the United States

**OCTOBER TERM, 1969**

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## No. 340

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BERNIE LUDWIG,

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*vs.*

STATE OF FLORIDA,

*Respondent.*

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**On Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District**

---

## PETITION FOR REHEARING

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19 West Flagler Street
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MIAMI REVIEW — 371-4853 — 377-3721

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**On Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District**

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## PETITION FOR REHEARING

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The petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari, entered on November 17, 1969, and (2) granting the petition. As grounds for this motion, petitioner states the following:

## 1. The case of **Spinelli vs. The United States**

On January 27, 1969, this Court rendered its opinion in the case of **Spinelli vs. The United States** wherein this Court ruled that a mere allegation that the FBI "has been informed by a confidential reliable informant" that a wagering suspect was "operating" and "accepting wagers and disseminating wagering information" by means of two telephones carrying specified numbers was not enough to furnish probable cause for a search warrant, even though the informant's tip was corroborated in the affidavit by other allegations, based on an independent FBI investigation, that the suspect was a "known" gambler, and was seen entering and leaving the apartment in which the telephones specified by informant were listed.

In the instant case the petition for a writ of certiorari did not cite the **Spinelli** case, but it is obvious that said case is very definitely applicable to the facts of this case. As a matter of fact, the information received by the FBI in the **Spinelli** case and placed in their affidavit for a search warrant far exceeds the information placed by the police in the affidavit for a search warrant in the instant case.

The affidavit in the instant case is based solely upon the statements of an informant whose reliability or credibility is not even alleged. In the **Spinelli** case not only was it alleged that the informant was reliable but that an independent FBI investigation had corroborated material portions of the informant's information.

It would be unfair to the petitioner in the instant case to deny him relief for the reasons aforesaid when the petitioner, Spinelli, was granted relief.

## CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

_____

*Attorney for Petitioner*

## CERTIFICATE OF COUNSEL

As counsel for the petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58 (2).

_____

*Attorney for Petitioner*

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Rehearing was mailed to EARL FAIRCLOTH, JR., Attorney General for the State of Florida, 1350 Northwest 12th Avenue, Miami, Florida 33125; Clerk of the Florida District Court of Appeal, Third District, 1350 Northwest 12th Avenue, Miami, Florida 33125; Clerk of the Supreme Court of Florida, Tallahassee, Florida 32304; Clerk of the Criminal Court of Record of Dade County, Florida, 1351 Northwest 12th Street, Miami, Florida 33125, this ____ day of December, 1969.

_____

*Attorney for Petitioner*